

OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

S. R.

Claimant,

and

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Service Agency.

OAH No. L 2002080042

DECISION

This matter came on for regularly scheduled hearing on April 7, 2003 at Lancaster, California, before Ralph B. Dash, Administrative Law Judge, Office of Administrative Hearings, State of California. The North Los Angeles County Regional Center ("Service Agency") was represented by Jaime, D. Mejlskzenkier, M.D., Director of Clinical Services. S.R. ("Claimant") was represented by J.R., mother, and S.S., grandmother.

Evidence was received, the record was closed and the matter was submitted:

ISSUE

Does the Claimant have a developmental disability entitling her to Service Agency services? More specifically, is Claimant eligible to receive services from the Service Agency on the basis of mental retardation and/or under the so-called "fifth category" i.e., disabling conditions found to be closely related to mental retardation or which require treatment similar to that required for mentally retarded individuals?

FACTUAL FINDINGS

The Administrative Law Judge finds the following facts:

1. Claimant is a 32 year old female, born in Glendale, California on May 4, 1971. She has a very long history of psychological problems coupled with social misbehavior. For virtually her entire time during her primary education (starting in the second grade), Claimant received special services from the school district after having been identified as "seriously emotionally disturbed." As early as 1984, she was being treated with psychotropic medication (Haldol) and weekly therapy sessions. She was hospitalized "for behavioral reasons" at age 10.

Her IQ has been tested numerous times over the years with the scores, while gradually decreasing, always within the normal range. At age 11, Claimant was evaluated at UCLA's Neuropsychiatric Institute. Her full scale IQ was 91. On examination by a Service Agency psychologist last year, her IQ was determined to be 88.¹ Various school reports noted Claimant did not perform to her cognitive ability; however, this was thought to be due to a possible learning disability.

2. Claimant takes care of virtually all of her personal needs. She is independent in her care of daily living and is able to prepare simple meals for herself and dress and bathe herself. She has learned how to drive and has had a driver's license, but does not drive. She does not take public transportation, but is able to and does arrange for Dial-A-Ride. She lives by herself in her own apartment. Her mother and grandmother visit frequently, and help with cleaning, shopping and money management. She does not hold a job, and has met with no success in training arranged through the Department of Rehabilitation. However, her lack of success was shown to be because of emotional problems and inability to interact with others, as opposed cognitive dysfunction. Claimant noted in a Service Agency interview that she likes to write cards and letters and enjoys reading, claiming to be able to read at a 5th or 6th grade level. She has taken numerous junior college courses over the past 10 years, with varying degrees of success. She attends church, where she has friends.

3. Claimant's speech is articulated well, with clear enunciation. Her speech is rather loud and pressured, sounding as though she is in distress much of the time. She often appears agitated and belligerent. Her manner has been described as "brusque, abrupt, harsh, and excessively agitated and angry." She frequently misperceives the intentions of others and is socially inept.² She does have some physical limitations, owing to her injured ankle and morbid obesity.

3. Claimant has had various psychiatric diagnoses over the years, including bi-polar affective disorder, intermittent explosive disorder and Personality Disorder NOS ("B" cluster traits--Narcissistic, Borderline and Histrionic). She has not been diagnosed with a developmental disability which has manifested itself before the age of 18. She sees a psychiatrist monthly for medication management. She currently takes trazodone hcl (an anti-depressant, Paxil (an anti-depressant and anxiolytic) and Risperdal (an anti-psychotic agent). She receives psychotherapy twice monthly, "all that Medical pays for."

¹ In January of 1999, Claimant was involved in a very seriously pedestrian versus automobile accident. In addition to having her ankle "partially amputated", she suffered head contusions. The medical experts opined that post traumatic stress may be a contributing factor in the reduction of the IQ score

² The record is replete with anecdotal evidence of Claimant's poor social skills. Her behavior is neatly summed up in one passage from an IEP prepared on May 16, 1983: "[Claimant] seeks attention and reassurance by continuously questioning, feigning helplessness, or by bullying. [She] often expresses herself in an affected manner--either abrasively by standing too close, and speaking in a loud nasal voice, or adopting a childish manner with a mincing gait, finger to her chin and speaking in a high artificial tone. This unnatural behavior seems to alienate and annoy both peers and adults."

4. On July 9, 2002, the Service Agency denied eligibility, asserting that claimant's diagnoses were such that she is not eligible for services.

APPLICABLE LAW

Various statutes and regulations relating to eligibility apply to Claimant's request for services. Welfare and Institutions Code section 4512 defines "developmental disability" as:

a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual, and includes mental retardation, cerebral palsy, epilepsy, autism, and disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

As relevant here, California Code of Regulations, Title 17 ("CCR"), section 54000 defines "developmental disability" as a disability attributable to mental retardation or other conditions similar to mental retardation that require treatment similar to that required for mentally retarded individuals. The disability must originate before age 18, be likely to continue indefinitely, and constitute a substantial handicap. Excluded are handicapping conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical in nature.

These three exclusions from the definition of "developmental disability" under CCR section 54000 are further defined therein. Impaired intellectual or social functioning which originated as a result of a psychiatric disorder, if it was the individual's sole disorder, would not be considered a developmental disability. "Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have been seriously impaired as an integral manifestation of the disorder."

Nor would an individual be considered developmentally disabled whose only condition was a learning disability (a significant discrepancy between estimated cognitive potential and actual level of educational performance) which is not "the result of generalized mental retardation, educational or psycho-social deprivation, [or] psychiatric disorder" Also excluded are solely physical conditions such as faulty development, not associated with a neurological impairment, which results in a need for treatment similar to that required for mental retardation.

//
//

//

CCR section 54001 provides:

(a) ‘Substantial handicap’ [as required to find a “developmental disability” under CCR §54000] means a condition which results in major impairment of cognitive and/or social functioning. Moreover, a substantial handicap represents a condition of sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential.³

(b) Since an individual’s cognitive and/or social functioning are many-faceted, the existence of a major impairment shall be determined through an assessment which shall address aspects of functioning including, but not limited to:

- (1) Communication skills;
- (2) Learning;
- (3) Self-care;
- (4) Mobility;
- (5) Self-direction;
- (6) Capacity for independent living;
- (7) Economic self-sufficiency

In CCR section 54002, the term “cognitive” is defined as “the ability of an individual to solve problems with insight, to adapt to new situations, to think abstractly, and to profit from experience.”

The Diagnostic and Statistical Manual of Mental Disorders (4th edition, 1994, American Psychiatric Association, also known as DSM-IV) is a well respected and generally accepted manual listing the diagnostic criteria and discussing the identifying factors of most known mental disorders. The manual uses a number system for the different disorders which is accepted by most medical and psychotherapeutic professionals (and insurance companies) as a shorthand method to designate the disorders that are more specifically described in the manual.

The DSM-IV contains information on the diagnosis of mental retardation which can assist in answering the eligibility issue in this case. The three essential criteria of mental retardation are: (1) significantly subaverage general intellectual functioning; (2) accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health and safety; and (3) the onset must occur before age 18. The DSM-IV gives further explanations of these criteria (at pages 39 to 46), the significant aspects of which are summarized below.

³ For some reason, the phrase used in Welfare and Institutions Code §4512 is “substantial disability,” not “substantial handicap,” as used in the Regulations. There are no significant differences in the phrases.

The first criterion, general intellectual functioning, is defined by the intelligence quotient (IQ or equivalent), assessed by use of one or more standardized tests. The level of “significantly subaverage,” as required by this criterion, is defined as an IQ of 70 or below, and it must be noted that the scoring is such that there is a measurement error of about 5 points in assessing IQ. For example, a Full Score IQ of 70 on one of the standardized tests is considered to represent a range of 65-75.

The second criterion, adaptive functioning, “refers to how effectively individuals cope with common life demands and how well they meet the standards of personal independence expected of someone in their particular age group, sociocultural background, and community setting.” DSM-IV, page 40. It can also be measured by various means that must be suited to accommodate any other disabilities the person may have (e.g., a blind person cannot be given a written test). Significantly, problems with adaptive functioning are more likely to improve with remedial efforts than will IQ, which tends to remain the same. In fact, improvement can be such that, with appropriate training and opportunities, someone who had mild mental retardation as a child may later develop good adaptive skills and no longer have the level of impairment required for a diagnosis of mental retardation.

The range of intelligence above mild mental retardation (IQ 50-55 to approximately 70) is titled “borderline intellectual functioning,” and has an IQ range generally of 71-84. Because an IQ score has a measurement error of plus or minus 5 points, it is possible to diagnose mental retardation in individuals with IQ scores between 71 and 75 if they have significant deficits in adaptive behavior that meet the second criterion. “Differentiating Mild Mental Retardation from Borderline Intellectual Functioning requires careful consideration of all available information.” DSM-IV, page 45.

Throughout the applicable statutes and regulations (Welfare & Institution Code §§ 4700 - 4716, and California Code of Regulations, Title 17, §§ 50900 - 50964), the state level fair hearing is referred to as an appeal of the Service Agency's decision. Particularly in this instance, where Claimant seeks to establish his eligibility for services, the burden is on the appealing claimant to demonstrate that the Service Agency's decision is incorrect.

DISCUSSION

To answer the question of Claimant's eligibility requires a discussion of the applicable statutes and regulations, and the relationship of the evidence to them. Several requirements must be met. Several steps of analysis might be needed. At any point, a failure to satisfy a requirement will result in a conclusion of no eligibility. If all requirements are satisfied, eligibility is found, unless the Service Agency proves an exclusion. In other words, a developmental disability must exist. Not only must it be determined if Claimant's condition fits in a category of eligibility, it must also be a substantial disability or handicap, and must not be solely from an excluded condition.

Welfare and Institutions Code (“W&I”) §4512 does not define what constitutes either a condition which is closely related to mental retardation, or one which requires treatment similar to that required for mentally retarded individuals. Whereas the first four categories of eligibility are very specific (e.g., autism or cerebral palsy), the disabling conditions under this residual, fifth category are intentionally broad to encompass unspecified conditions and disorders. There are many persons and groups with subaverage functioning and impaired adaptive behavior; however, the service agency does not have a duty to serve all of them. The fifth category does not provide unlimited access to all persons with some form of learning or behavioral disability.

While the legislature did not define this category, it did require that the condition be “closely related” (W&I §4512) or “similar” (CCR §54000) to mental retardation. The definitive characteristics of mental retardation are the significant degree of cognitive and adaptive deficits. Thus, to be closely related or similar to mental retardation, there must be a qualitative or functional correlation of cognitive and adaptive deficits which render that individual’s disability like that of a person with mental retardation. This, however, is not a simple and strict replication of all of the cognitive and adaptive qualities or criteria to find eligibility due to mental retardation (e.g., reliance on IQ scores); otherwise, this fifth category would be redundant. Eligibility under this category requires analysis of the quality of claimant’s cognitive and adaptive functioning and whether the effect on his performance renders him like a person with mental retardation.

To have a condition which requires treatment similar to that provided to mentally retarded persons is not a simple exercise of enumerating the services provided to such persons and seeing if claimant would benefit. Many people could benefit from the types of services offered by regional centers, such as counseling, vocational training or living skills training. The criterion is not whether someone would benefit. Rather, it is whether someone’s condition requires such treatment.

Claimant’s cognitive and intellectual functioning do not fall within the realm of “mental retardation.”

However, as set forth in CCR §54001(b), because an individual’s cognitive and/or social functioning are many-faceted, there are at least seven categories relative to “adaptive functioning” that must be examined as well. These categories are the same or similar to the categories of adaptive functioning skills listed in the DSM-IV that, to support a diagnosis of mental retardation, requires a finding of significant limitations in at least two such skills. Applying the evidence to the seven listed categories reveals the following:

(1) Communication skills: Claimant’s communication skills problems, by themselves, are neither severe enough nor sufficiently impairing to constitute a developmental disability. In fact, based on all the evidence, it appears these skills are not impaired.

(2) Learning: The evidence shows Claimant is not significantly impaired in her ability to learn.

(3) Self-care: Claimant's ability to take care of herself is only very slightly impaired. She regularly completes her activities of daily living.

(4) Mobility: Claimant's mobility is somewhat impaired; but this is due to her preference for taking Dial-A-Ride and not due to an inability to take the bus.

(5) Self-direction: Claimant has no trouble in making her needs known, and in obtaining that which she seeks.

(6) Capacity for independent living: Claimant has lived on her own for a number of years. While she receives assistance from her mother and grandmother for shopping and cleaning, she nevertheless can bathe and dress herself, prepare meals and provide her own recreation. She does not need continual, or even significant, supervision for her safety. She has demonstrated the capacity for independent living.

(7) Economic self-sufficiency: Claimant is totally disabled and receives compensation therefore.

Looking at these factors in total, there is not enough evidence of significant limitation to satisfy the second criterion for mental retardation in DSM-IV and to conclude that claimant suffers from a major impairment under CCR section 54001.

The statutory and regulatory definitions of "developmental disability" (W&I § 4512 and CCR § 54000) exclude conditions that are solely physical in nature, solely psychiatric disorders or solely learning disabilities. Therefore, a person with a "dual diagnosis," that is, a developmental disability and a psychiatric disorder, physical disorder, or learning disability, would still be eligible for services. However, someone whose conditions are only from the excluded categories (psychiatric disorder, physical disorder, or learning disability, alone or in some combination) and who does not have a developmental disability, would not be eligible. Claimant's diagnoses have consistently included psychiatric disorders and/or learning disabilities, which are both excluded. The present state of the evidence is not sufficient to establish Claimant's eligibility for services from the Service Agency.

//
//
//
//
//
//

//
//
//
//

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Claimant's appeal of the Service Agency's determination that she is not eligible for services from the Service Agency is denied.

DATED: _____

RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings

Notice: This is the final administrative decision pursuant to Welfare and Institutions Code section 4712.5(b)(2). Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.